

ROBERT E. DONAHUE

IBLA 80-343

Decided October 21, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, returning proof of labor, map, and fee for the Indian Gold mining claim and declaring the claim abandoned.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

APPEARANCES: Robert E. Donahue, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Robert E. Donahue has appealed the decision of the Idaho State Office, Bureau of Land Management (BLM), dated December 19, 1979, returning his 1979 proof of labor, map, and filing fee for the Indian Gold mining claim as insufficient for purposes of recordation under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and corresponding regulations at 43 CFR 3833.1-2(a).

On October 16, 1979, BLM received the above noted documents. On October 20, 1979, BLM notified appellant by telephone that he was required to file a copy of his notice of location for recordation purposes. Appellant responded by letter dated October 21, 1979, and received by BLM on October 22, 1979, that he had forwarded to BLM his "proof of labor and amended filing so that you could locate my claims without difficulty. My claim being duly recorded in the Malheur County Courthouse prior to Sept. 1st 1979." He also indicated that his claim was "legally filed prior to Sept. 1, 1976" and attached a copy of his 1976 proof of labor for the claim.

The "amended filing" which BLM took to be a map was notarized on August 28, 1979, and reads, "I wish to amend my Indian Gold claim as follows: T 24 S R 46 E Sec. 1. Stake #7 is 100 feet of the road while post #6 is 300' from the road," followed by a diagram of the claim. The document does not appear to have been recorded with the Malheur County recorder's office and gives no indication of the date appellant originally located his claim or the date he amended the location of the claim.

On appeal appellant declares that he properly filed his claim prior to October 22, 1976, and his constitutional rights have been violated.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The corresponding regulation 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

Under FLPMA and Departmental regulations the requirements for filing are clear. Appellant does not contend that he was unable to

obtain a copy of the notice of location, nor did he submit any evidence that would comply with the minimum showing required where a notice of location is unavailable or the claim is being held pursuant to 30 U.S.C. § 38 (1976). See Philip Sayer, 43 IBLA 296 (1979). Since appellant did not submit a copy of the certificate of location for the claim on or before October 22, 1979, BLM properly declared the claim abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

